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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 March 1996]

1. The experience of the United Nations Independent Expert in Guatemala has been extremely positive and has had an important impact on the troubling human rights situation there. The need for public reporting by the Independent Expert persists, indeed is crucial to prevent deterioration in Guatemala's troubling human rights situation.

2. The United Nations Commission on Human Rights has been examining the human rights situation in Guatemala since 1979. Between 1982 and 1986, the Commission had assigned Guatemala a special rapporteur, placing it in the category of the world's most serious human rights offenders. After a civilian Government was established in 1986, the Commission assigned Guatemala to the category of advisory services, to offer advice in improving the human rights situation. As serious human rights violations persisted even under civilian Governments, the Commission in 1990 approved the appointment of an "independent expert" for Guatemala - who would continue to provide advisory services but also prepare a detailed public report on the human rights situation.

3. The desire to avoid the stigmatization of being assigned a special rapporteur has motivated successive Guatemalan Governments to strive to demonstrate compliance with the recommendations of the Independent Expert. Shortly after assuming the presidency in June 1993, Ramiro de León Carpio drew up a human rights agenda based almost entirely on the recommendations of the Independent Expert. In the initial months of his administration, de León Carpio adopted several important reforms in keeping with those recommendations; unfortunately, many of these efforts were later abandoned under military pressure. None the less, the current Government's return to key recommendations put forth by both the Expert Christian Tomuschat and his successor, Mónica Pinto - such as the need to reform the police forces - illustrate the extent to which the Commission, through the public reports of the Independent Expert, continues to define the agenda for human rights in Guatemala.

4. Even while it moves to demonstrate compliance with the Experts' recommendations, Guatemala's new Government of Alvaro Arzu Irigoyen, who took office on 14 January, has announced its desire to end the mandate of the Independent Expert and accept in its place advisory services without a public report. Guatemala's acting foreign minister, Gabriel Aguilera, was quoted justifying a request for an end to the public reports of the Independent Expert on the grounds that a genuine democracy had taken root in Guatemala and that the impending resolution of Guatemala's three-decade armed conflict would obviate the need for monitoring by the Commission. ("Canciller en funciones cuestiona política de DH", Prensa Libre, 27 February 1996.)

5. To terminate the Independent Expert's mandate would be a grave mistake. While the new Government has made public statements regarding its intentions to respect human rights, and has taken some initial steps in this direction, it is far too soon to evaluate the impact of these intentions and first steps.

6. Moreover, the experience of the past 10 years in Guatemala, in which three freely elected civilian Governments have failed to bring an end to a pattern of gross violations of human rights committed by the army and its surrogates, makes clear that the arrival of a fourth elected Government does not in and of itself guarantee an end to serious human rights violations. Moreover, each civilian who has reached the presidency has promised to negotiate an end to Guatemala's armed conflict, and none has yet managed to attain that goal. In the meantime, serious human rights violations have continued in Guatemala, including extrajudicial executions, disappearances and torture. On 5 October 1995, Guatemalan soldiers massacred 11 refugees who had returned from Mexico to a village in the department of Alta Verapaz. On 23 June 1995, human rights monitor and Presbyterian pastor Manuel Saquic Vásquez disappeared in Chimaltenango. The pastor's body was found later, partially decapitated and with 33 stab wounds. Since the slaying, the second of a human rights defender in that area in the last two years, several human rights monitors, witnesses and relatives of victims of human rights abuses have suffered death threats from the self-styled death squad "Avenging Jaguar" (Jaguar Justiciero).

7. In several notorious cases of extrajudicial executions of human rights monitors, judges have issued warrants for the arrest of military commissioners and civil patrol members. The police have failed to act on these warrants, in

some cases over the course of several years. Yet while the Government has consistently failed to bring to justice those responsible for human rights violations, a sort of underground system has regularly meted out retaliation against those who pursued justice through the courts. Not only have witnesses, plaintiffs and relatives of victims of human rights violations been targeted for violence and intimidation, but prosecutors, judges, and police who attempted to bring violators to justice have also suffered reprisals. In most of these cases, the evidence strongly suggests that the security forces or their agents were behind the reprisals.

8. While halting efforts have been made by each of the last three civilian administrations to comply with the recommendations of the Independent Experts named by the Commission on Human Rights, these goals remain largely unfulfilled. This makes continued public supervision by the Independent Expert indispensable.

9. One of the Experts' key recommendations - an end to press-gang-style forced military recruitment - has been largely fulfilled, thanks to the insistence of the Independent Experts and the United Nations human rights verification mission in Guatemala (MINUGUA). Another recommendation, the abolition of the institution of military commissioners, was adopted by the Government in September 1995. Military commissioners are civilians employed by the army to recruit soldiers, provide intelligence to the army, and carry out rural political police operations. Unfortunately, ex-military commissioners, along with civil patrollers, continue to commit gross violations of human rights with impunity. The Government has yet to take adequate steps to disarm the individuals and to prosecute and punish those responsible for human rights violations.

10. Other recommendations still unfulfilled or only partially fulfilled include the following:

(a) Abolition of the army-organized civil patrols, which have been responsible for a consistent pattern of violations of human rights. In her January 1994 report, Independent Expert Mónica Pinto recommended that while the means for the dissolution of the patrols were still being adopted, the Government should disarm those patrols which had participated in grave violations of human rights, such as those in San Pedro Jocopilas, Joyabaj and Colotenango. None the less, the military, which arms, trains, and supervises the civil patrols, has refused to take weapons away from those units which have committed abuses, and the formal dissolution of the patrols remains a distant promise of the much-delayed peace process;

(b) Demilitarization of the Presidential General Staff (Estado Mayor Presidencial) and establishment of a civilian intelligence service compatible with democratic government. This recommendation reflects the history of extrajudicial executions, disappearances, and torture carried out by the army's military intelligence service (G-2) and the Archivo section of the Presidential General Staff. Although President de León Carpio announced the dissolution of the Archivo in 1993, that unit maintained a semi-clandestine existence, albeit with a reduced operational staff. Its extensive files on individuals, which are believed to have been used to compose hit lists, have not been turned over to civilian authorities, as recommended by both Tomuschat

and Pinto. The proposal put forward by the de León Carpio Government for a new intelligence service guaranteed a continuing powerful role for the military in domestic intelligence matters, contrary to the Experts' clear recommendations;

(c) Police reform in order to insulate civilian law enforcement from military pressure. This has been stressed as an urgent priority by both Tomuschat and Pinto and consequently became an early priority of the de León Carpio Government but was later abandoned under military pressure. The Arzu Government appears interested in renewing reform efforts, a process which will benefit from continued scrutiny and public evaluation by the Commission on Human Rights;

(d) Abolition of impunity in cases of grave violations of human rights. Impunity remains entrenched, despite the recommendations of the Independent Expert and MINUGUA;

(e) The establishment of civilian court jurisdiction over crimes in which either the victim or the perpetrator is a civilian. This important measure recommended by Tomuschat was not incorporated into Guatemala's new criminal procedures code, which instead allowed for civilian participation in military court trials in cases of common crime committed by army members. None the less, the civilian courts have established an important precedent in the case of the massacre of refugees in Alta Verapaz, which is now in the hands of a civilian court.

11. Human Rights Watch believes that it is of paramount importance that public reports by the Independent Expert continue to be published. We urge the United Nations Commission on Human Rights to renew the mandate of the Independent Expert without modifications.